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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED PUBLIC WORKERS,	)	CIVIL NO. 03-00598 DAE/LEK
AFSCME LOCAL 646, AFL-CIO,	)	
MUTUAL AID FUND TRUST,	)	DEFENDANT'S CONCISE
	)	STATEMENT OF MATERIAL
Plaintiff,	)	FACTS; AFFIDAVIT OF ERIC A.
	)	SEITZ; EXHIBITS 1-3;
vs.	)	AFFIDAVIT OF GARY W.
	)	RODRIGUES; CERTIFICATE OF
GARY W. RODRIGUES,	)	SERVICE
	)	
Defendant.	)	
_____	)	(Trial: August 28, 2007)

DEFENDANT'S CONCISE STATEMENT OF MATERIAL FACTS

Defendant GARY W. RODRIGUES, by and through his undersigned attorneys, herein submits the following Concise Statement of Material Facts in support of his Motion for Summary Judgment pursuant to LR. 56.1 of the Local

Rules of Practice for the United States District Court for the District of Hawaii.

Facts

1. Defendant Gary W. Rodrigues served only as administrator of the Mutual Aid Fund Trust at all times pertinent hereto.
2. Defendant Rodrigues never served as a named trustee of the Mutual Aid Fund Trust at any time pertinent hereto.
3. All of the investment decisions which form the bases for the claims in this action were made/directed by the duly authorized trustees of the Mutual Aid Fund Trust.
4. In or about 1991, the Mutual Aid Fund Trust retained Albert A. Hewitt to recommend and handle investments for the Trust.
5. At the time he was retained by the Trust, Mr. Hewitt was affiliated with Smith Barney, a well known and highly reputable investment firm, and who was highly recommended on the basis of his investment services to other entities in Hawaii.

Evidentiary Support

- Affidavit of Gary W. Rodrigues, attached to Defendant Rodrigues Motion to Dismiss filed herein on January 16, 2004, ¶(3), Exhibit 1, attached hereto to Affidavit of Eric A. Seitz .
- Exhibit 1, attached hereto to Affidavit of Eric A. Seitz, Affidavit of Gary W. Rodrigues, attached to Defendant Rodrigues Motion to Dismiss filed herein on January 16, 2004, at ¶¶(4) & (5).
- Exhibit 1, attached hereto to Affidavit of Eric A. Seitz, Affidavit of Gary W. Rodrigues, attached to Defendant Rodrigues Motion to Dismiss filed herein on January 16, 2004, at ¶¶(7) & (9).
- Affidavit of Gary W. Rodrigues attached hereto, at ¶(2).
- Affidavit of Gary W. Rodrigues attached hereto, at ¶(3).

6. During that time, Mr. Hewitt submitted regular reports to the sitting Trustees of the Trust, and both his activities and his continued retention were scrutinized and authorized by the Trustees.

Affidavit of Gary W. Rodrigues, ¶(4), attached hereto.

7. Albert A. Hewitt recommended investments of Trust monies in Best Rescue Systems, Inc.

Affidavit of Gary W. Rodrigues attached hereto, at ¶(5).

8. At that time Defendant Rodrigues reasonably believed that Mr. Hewitt's recommendation was a reasonable and prudent investment based on his professional background and prior performance.

Affidavit of Gary W. Rodrigues attached hereto, at ¶(6).

10. The Declaration of 501(c)(9) Trust by UPW Local 646, AFSME, AFL-CIO specifies the duties and powers assigned to the trustees of the Mutual Aid Fund Trust.

Exhibit 2, attached hereto to Affidavit of Eric A. Seitz.

DATED: Honolulu, Hawaii, March 28, 2007 .

/s/ Eric A. Seitz  
ERIC A. SEITZ  
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Attorneys for Defendant  
Gary W. Rodrigues